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Supreme Court of the United States.

OCTOBER TERM, 1966.

No. 554

INTERNATIONAL BROTHERHOOD OF TELEPHONE WORKERS,
Petitioner,

v.

LOCAL NO. 2, INTERNATIONAL BROTHERHOOD OF TELEPHONE WORKERS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

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Goldwater, "The Legislative History and Purpose of LMRDA" (Symposium, pp. 32, 34) 18

Handbook of Union Government Structure and Procedures, National Industrial Conference Board, Studies in Personnel Policy, No. 150, 1955, reprinted in U.S. Congress, Senate Committee on Labor and Public Welfare, Subcommittee on Labor, 85th Congress, 2d Session, "Government Regulation of Internal Union Affairs Affecting the Rights of Members," Selected Readings Prepared by the Legislative Reference Service, Library of Congress, pp. 42-44 14

H.R. 8342, 86th Congress, 1st Session, vol. I, Legislative History of the LMRDA, U.S. Government Printing Office, pp. 687, 697 17, 18

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

The petitioner, International Brotherhood of Telephone Workers, by its attorneys, prays that a writ of certiorari issue to review the judgment entered in this case on July 13, 1966, by the United States Court of Appeals for the First Circuit.

Opinions Below.

The opinion of the District Court (R. 63) has not yet been reported. It is reproduced as Appendix A (p. 22) of this petition. The opinon of the Court of Appeals (App. B, p. 27) has not yet been reported.

Jurisdiction.

The judgment of the Court of Appeals was entered on July 13, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

Questions Presented.

1. Whether Section 101 (a)(3) of the Labor-Management Reporting and Disclosure Act of 1959,[1] controlling the procedure for an increase by a union in "rates of dues . . . payable by members," is applicable to an increase by a national or international union in "per capita tax," which is the amount per member allocated to the national or international union from receipts of members' dues, the balance of such dues being allocated to the local affiliate.

2. Whether Section 101 (a)(3)(B)(ii) of the Labor-Management Reporting and Disclosure Act of 1959, which provides for an increase in membership dues by a national or international union by a "majority vote of the members . . . voting in a membership referendum conducted by secret ballot," requires that a ballot be delivered to each member and forbids such an increase where the proposal for such increase has been submitted by the national or international union for approval by the membership voting by secret ballot at meetings of the local affiliates, each member having been notified of the proposed dues increase.

3. Assuming an increase in dues is made in violation of Section 101 (a)(3)(B) of the Labor-Management Reporting and Disclosure Act of 1959, whether a subsequent in-

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[1] 73 Stat. 519, 522, 29 U.S.C. § 401(a)(3) (1958 Edition, Supp. V). The Labor-Management Reporting and Disclosure Act of 1959 will sometimes be referred to as "the Act" or LMRDA.

crease in dues in conformity with the requirements of that Act is nevertheless illegal to the extent that it attempts to apply the increase retroactively where the effect of the action is the assessment on present members of an amount equal to the previous illegal dues increase and to provide a set-off against amounts due to members who have made illegal payments.

4. Whether a District Court has jurisdiction under Section 102 of the Act, 73 Stat. 523, 29 U.S.C. § 412, which gives relief to "Any person whose rights secured by the provisions of this title [Bill of Rights of Members of Labor Organizations] have been infringed," to entertain a suit by a local union and whether a local union has standing to bring such a suit based on a violation of Section 101 (a)(3).

Statutes Involved.

The Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 *et seq.*, 29 U.S.C. § 401 *et seq.*, Title I, Title II, § 201, Title III and Title IV are reproduced as Appendix C. Section 101 (a)(3) and Section 102 are as follows:

> "(3) DUES, INITIATION FEES, AND ASSESSMENTS.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—
>
> "(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the mem-

bers in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

"(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constitutent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

. . . . . .

"CIVIL ENFORCEMENT

"SEC. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any

such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

Statement of the Case.

The petitioner, International Brotherhood of Telephone Workers (herein sometimes referred to as the "International"), is a labor union of over ten thousand members (R. 63, App. A, p. 22; R. 75, App. B, p. 27). The membership is made up of employees of the New England Telephone and Telegraph Company in five New England states: Maine, New Hampshire, Massachusetts, Vermont and Rhode Island (R. 33-34). Its office and headquarters are in Boston, Massachusetts (R. 4, 11).

The respondent Local No. 2, International Brotherhood of Telephone Workers (hereinafter referred to as the "Local" or "Local 2"), is one of twenty-five locals chartered by and affiliated with the International (R. 75, App. B, p. 27). The office and headquarters of Local 2 are also in Boston, Massachusetts (R. 4, 11).

> "The International meets in convention biennially. In the periods between conventions its affairs are administered by a 15-member group called the International Executive Council (IEC). This Council consists of the President, Secretary-Treasurer and the three Vice-presidents of the International, and ten Executive Board members." (Findings of District Court, R. 63, App. A, p. 22.)
>
> "On March 6, 1964, the IEC voted to propose an increase in the minimum dues for all members of the International to 85¢ a week for male members and 50¢ a

week for female members"[2] (Findings of District Court, R. 63, App. A, p. 22).

At that time the minimum dues were $2.50 per month for men (R. 54-55, 56), characterized as 60 cents for fifty weeks in the year (R. 38). The actual dues, fixed by the various locals, ranged from 60 cents per week to 85 cents per week, in each case for a fifty-week period. The dues fixed by Local 2 were 84 cents per week for a fifty-week period (R. 56).

At the same time, the International Executive Council proposed an increase in the "per capita payments from the Locals to the International" (Finding of District Court, R. 63, App. A, p. 23; R. 39) from $1.50 per month to $2.25 per month (R. 56). On the basis of minimum dues of 85 cents per ~~month~~ week, the dues receipts of each local after the deduction of the International's per capita would be $17.20 per ~~month~~ year per member (R. 42, 56).

Appropriate amendments to effect these membership dues increases and the increase in per capita payments to the International by the locals were submitted to the locals (R. 63-64, App. A, p. 23; R. 50-51, 54 *et seq.*, 69 *et seq.*). The locals were notified by the International that—

> "The requirements of the Labor Law are that a dues increase must be voted on by a majority of the members in a secret ballot vote taken at a notified membership meeting" (Findings of District Court, R. 64, App. A, p. 23; R. 50).

The District Court judge also found that—

> "Thereafter, the various Locals voted on the proposed constitutional changes by secret ballots at noti-

[2] The Local has no female members (R. 6), and, unless otherwise noted, references hereafter will be made only to the dues of male members.

fied meetings. All Locals were notified by Mr. Sullivan, in a letter dated July 29, 1964, that the dues increases had been favorably voted upon and would go into effect on September 1st. In reporting the results, wherever a majority of those voting in a Local voted to accept, the International listed the entire membership of that Local as voting 'for,' and where a majority of those voting in a Local voted to reject, the International listed the entire membership of that Local as voting 'against.' On this basis the tally showed 6,837 voting 'for' and 3,693 voting 'against,' with 255 votes 'not counted because no secret ballot was taken.' A majority of those voting in 17 of the Locals voted to accept the proposed changes and a majority of those voting in 7 Locals (including plaintiff, Local No. 2) voted to reject the proposed changes. One Local was listed as 'not voting' because of its failure to use the secret ballot. By letter dated July 10, Mr. Sullivan requested each Local to furnish the exact number of votes cast to accept and the number voting to reject at the meeting at which the dues increase was voted on. Out of a total membership of approximately 10,795 members eligible to vote, the number of members whose votes were tallied on defendant's Exhibit C, the actual vote count Local by Local, amounted to 1039, slightly less than ten per cent of the eligible voters. The individual votes were 541 to accept and 498 to reject the constitutional changes and dues increase." (R. 64-65, App. A, pp. 23-24.) [3]

On June 16, 1964, after an announcement in the May, 1964, edition of the *IBTW News* (R. 7), that "The general dues increase proposed by the I.E.C. in March has appar-

[3] See Exhibit B, R. 59-60, and Exhibit C, R. 61.

ently been accepted by the membership" and that "Processing of the new payroll deduction cards is being held up pending certification by Local Recording Secretaries" (R. 7), attorneys for the Local wrote to the International that the general dues increase had not been adopted in accordance with the Labor-Management Reform Act of 1959, for the reason that "A majority of the membership in good standing of the International Brotherhood of Telephone Workers did not vote to adopt this requested increase in a membership referendum conducted by secret ballot, nor by any other method provided in this statute." The letter concluded that "any members required to pay any additional monies as a result of the illegal action described above should be reimbursed" (R. 52).

On July 9, 1964, the Local filed its complaint, basing jurisdiction on the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 522, 29 U.S.C. § 401 *et seq.*, and more particularly Section 412 (R. 3). The complaint alleged that the effect of the proposals would be to "Increase the total dues paid by each member from 84¢ each week to 85¢ each week" and to "Increase the monthly per capita tax paid by Local No. 2 to the International from 70¢ each member to $1.45 each member" (R. 6). It alleged irreparable injury "in that it will have to pay to the International 75¢ more per capita tax for each member than it is now paying, or an additional payment of approximately $800.00 per month, while only receiving 1¢ more additional total dues paid by each member" (R. 9).

On July 23, 1964, the Local's application for a preliminary injunction was denied on the ground that—

> "Local has failed to show that unless International is enjoined from putting into effect the proposed increase in dues and amendments to the constitution

pending final disposition of the complaint, Local would suffer irreparable injury, or become insolvent, or be subjected to a reduction in its necessary activities, or be rendered ineffective as a local labor organization or fiduciary representative of its members." (R. 1.)

The changes in dues and per capita went into effect on September 1, 1964 (R. 24). On August 28, 1964, the Local voted to increase its dues from 84 cents to $1.04 (R. 27).

At the convention of the International, June 28-30, 1965, the changes in dues and per capita were voted to be effective retroactively to September 1, 1964 (R. 34, 71, R. 82, App. B, p. 34).

The case was tried on January 10 and 11, 1966, and on January 17, 1966, the District Court dismissed the complaint. The Court found and ruled that (R. 66-67, App. A, pp. 25-26)—

> "The method of conducting the vote on the proposed dues increase here adopted by the International fully protected the rights of its members. Each member in good standing was notified of the proposed dues increase; each had an opportunity to vote on it by secret ballot. It may be regrettable that so few members chose to avail themselves of their right, but there is no evidence in the record tending to show that any fault or wrongdoing by the International was responsible for such a light vote. [A light vote at referenda is not unusual. Leiserson, American Trade Union Democracy, p. 220.]
>
> "The vote in favor of the dues increase was 541 to 498. I rule that the dues increase was authorized by majority vote of the members in good standing of the International voting in a membership referendum conducted by secret ballot and, accordingly, that the dues

increase put into effect on September 1, 1964 was valid. The finding that the voting on the proposed amendments to the Constitution complied with the requirements of 29 U.S.C.A. 411 (a) (3) makes it unnecessary to consider defendant's argument that the increase in the 'per capita tax' was not an increase in the dues of the members of the International." (R. 66-67.)

The Local appealed to the Court of Appeals, which reversed the judgment. The mandate was stayed pending the filing of a petition for certiorari (R. 84).

Argument.

I. The decision of the Court of Appeals below that increases in per capita taxes allocated to the International are controlled by the provisions of Section 101 (a)(3) of LMRDA, applicable to "rates of dues . . . payable by members of any labor organization . . . ," is directly in conflict with the decision of the Court of Appeals for the Tenth Circuit in the case of *United Brotherhood of Carpenters & Joiners of America* v. *Brown,* 343 F. 2d 872, and with the view of the Court of Appeals for the Seventh Circuit in *Ranes* v. *Office Employees International Union, Local No. 28,* 317 F. 2d 915. See also *King* v. *Randazzo,* 234 F. Supp. 388 (D.C. E.D. N.Y. 1964), aff'd 346 F. 2d 307 (C.A. 2). The decision of the Court of Appeals below is also contrary to the plain meaning of the statute and inconsistent with the intent of Congress.

In *United Brotherhood of Carpenters & Joiners of America* v. *Brown,* a local union had affiliated with a District Council, increased its dues, and provided for a per capita tax to the District Council (p. 876). Thereafter the Local attempted to disaffiliate from the District Council and dis-

continued the increase in dues and the payments of per capita tax. Thereupon the International established a trusteeship over the Local, affiliated it with the District Council, and, without secret ballot, increased the membership dues and paid per capita tax to the District Council from the funds of the Local. Members of the Local brought suit under the LMRDA against the International to invalidate the trusteeship and for an accounting.

The District Court found that the trusteeship was invalid and that there had been an increase in dues in violation of the Act, for which an accounting was ordered. The Court of Appeals for the Tenth Circuit affirmed the judgment of the District Court that the trusteeship was invalid, but reversed, insofar as the judgment required an accounting of the sums paid by the Local to the District Council, because it was not clear whether these sums represented an illegal dues increase paid by the members or per capita taxes paid by the Local to the District Council. The Court of Appeals remanded the case to the District Court with instructions that (p. 886)—

> "If it should develop on the accounting that the payments were for per capita tax no recovery may be had by plaintiffs. If it should develop that they were not for per capita tax, the plaintiffs should recover the amount so paid."

The Court held that per capita taxes were not controlled by the Act, stating (p. 886):

> "there is a clear distinction between local 'dues', as that term is used in the statute, and 'per capita tax', which is involved in the instant lawsuit. Ranes v. Office Employees International Union, Local No. 28, 7 Cir., 317 F. 2d 915."

The Court, contrary to the decision of the First Circuit, characterized per capita taxes as follows (p. 876):

> "Such a per capita tax is generally paid periodically to the parent labor organization, i.e., the District Council in this case, *and is a charge against the local union, not its members* . . ." (Emphasis supplied.)

The decision of the Court below is also in conflict with the view of the Court of Appeals for the Seventh Circuit in *Ranes* v. *Office Employees International Union, Local No. 28,* 317 F. 2d 915. In that case members of the Union contended that the establishment of dues minima by an International, though in compliance with Section 101 (a)(3)(B) of the Act, required further action by the Local, pursuant to Section 101 (a)(3)(A). The plaintiff members contended that the provisions in the Act for increases in dues by the International applied only to increases in per capita taxes. The Court rejected the contention, not on the narrow ground (as the Court below would have it) that Section 101 (a)(3)(B) was not restricted to per capita taxes, but on the broad ground that the Section had no application to per capita taxes, characterized by the Court as (p. 918)—

> "The charge per member payable periodically, usually monthly, by a local union to the national or international union with which it is affiliated. The per capita tax is a charge against the local union, not its members, collected by the parent union in lieu of a dues assessment."

The Court said (p. 918):

> "When Congress provided methods for increasing 'rates of dues' in subsection (B) we think it intended

what the plain language of the statute says. We, accordingly, reject plaintiffs' argument that that subsection should be interpreted to apply to per capita taxes. We should be reluctant to attribute to Congress either a lack of knowledge of the distinction between 'dues' and 'per capita taxes' in labor-union parlance or the lack of the ability to articulate its intent."

The District Court, in the case of *King* v. *Randazzo*, also accepted the distinction between per capita taxes and membership dues, but found that the exactions which the Union had labeled per capita taxes were levied directly on the members, and therefore were dues within the meaning of Section 101 (a)(3). The Court said (p. 394):

"A true 'per capita tax' is one which is levied by a parent labor organization upon a *local* union with which it is affiliated. It is not a tax levied by a parent or a coordinating union directly upon the *members* of its affiliated locals. It is paid to the parent body or authorized coordinating union from the dues collected by the local from its members and generally related to the numerical strength of the local. But it is not an additional sum charged directly to the member and it is not used as a subterfuge to increase dues." (Emphasis in original.)

The distinction between dues paid by union members and per capita taxes paid to an international from receipts which otherwise go to the local is an elementary one. (A Guide to Labor-Management Relations in the United States, Bulletin No. 1225, United States Department of Labor, par. 1.02, "Structure of the Trade Union Movement.") This distinction was obviously known to Congress. (See Handbook of Union Government Structure

and Procedures, National Industrial Conference Board, Studies in Personnel Policy, No. 150, 1955, reprinted in U.S. Congress, Senate Committee on Labor and Public Welfare, Subcommittee on Labor, 85th Congress, 2d Session, "Government Regulation of Internal Union Affairs Affecting the Rights of Members," Selected Readings Prepared by the Legislative Reference Service, Library of Congress, pp. 42-44.) See also the *Ranes* case, quoted above. Yet Section 101 (a)(3) refers, unambiguously, it is submitted, to "rates of dues . . . payable by members." Nowhere in the legislative history have we been able to find any mention of per capita taxes. Title I is exclusively concerned with the rights of members, not with the relationship—financial or otherwise—between the local and the national or international union. Only Title III, dealing with trusteeships, is concerned with that relationship, and the restrictions there set out are specific and limited. James P. Mitchell, Secretary of Labor, in 1959 characterized the trusteeship provisions as "only as much regulation by the government as has been found absolutely necessary" (James P. Mitchell, Secretary of Labor, Symposium on the Labor-Management Reporting and Disclosure Act of 1959, Slovenko, Editor,[4] "Safeguards for Union Democracy," p. 139).

But the allocation of funds as between the local and the international concerns the allocation of basic functions within the union structure. Union functions of collective bargaining, organizing, adjustment of grievances, etc., may be performed by the local or by the international or both (Monthly Labor Review, vol. 75, No. 4, Oct. 1952, "Financing of Union Activities," p. 375, Chart I, "Flow of Union Revenue and Services"). When performed by the international, they must be financed by per capita taxes,

[4] Hereafter referred to as "Symposium."

and any increase in such activities by the international requires an increase in per capita taxes (though not necessarily an increase in dues). Of course, such an increase in function—in organizational activity or strike activity—puts pressure on the dues structure and is ultimately "borne by the members," as the Court below puts it. But it does not follow that these activities or the per capita taxes which may be required to finance them are subject to the controls of Section 101 (a)(3) of the Act. Congress has placed the controls at the point of the actual dues increase to the member, and has not attempted to control other union activities and expenses, which may or may not ultimately result in increased dues.

Moreover, to extend the application of Section 101 (a)(3) to per capita taxes means an extension of that section to all the many different arrangements involving per capita taxes. (See Appendix E-1 of the Directory of National and International Labor Unions in the United States, 1965 Bulletin No. 1493, U.S. Department of Labor, Bureau of Labor Statistics, p. 76), which sets out the per capita tax requirements for categories of members paying less than full dues—the extent to which the local pays per capita taxes to the parent body in whole or in part on the basis of members who, because they are unemployed, involved in work stoppages, in the armed forces, or retired, pay less than full dues. See also Appendix E to that publication, p. 73, setting out the dues obligations of these categories. The decision of the Court below would subject changes in these categories which resulted in increased payments by the local to the parent body to Section 101 (a)(3) of the Act.

The Court below indicates that it may have been influenced by the fact that the International collected all the dues, took its per capita tax and remitted the balance to the Local (Note 16, R. 80, App. B, p. 32). But this is not

an unusual method of operation (Leiserson, American Trade Union Democracy (1959), p. 288). It is the result of the dues check-off by the employer under the collective-bargaining contract (R. 60). Since the contract is between the International and the employer (R. 43), the dues are naturally transmitted to the International, which takes out its per capita tax and transmits the balance to the Local.

II. The holding of the Court of Appeals below that the provision for a "membership referendum conducted by secret ballot" in Section 101 (a)(3)(B) requires that "the ballot be delivered to each and every eligible union member" (R. 81, App. B, p. 33) is contrary to the plain meaning of the statute and is inconsistent with the analysis of the legislative history of the Act in *American Federation of Musicians of the United States and Canada* v. *Wittstein*, 379 U.S. 171.

The word "referendum" is defined in Webster's Unabridged Dictionary (3d Ed.) as "*a*: the principle or practice of submitting to popular vote a measure passed upon or proposed by a legislative body or by popular initiative *b*: a vote on a measure so submitted *c*: a similar practice or method for ascertaining the will of members of an organized group (as a union . . .)"

The distinguishing feature of a referendum is that the measure voted on has been submitted or proposed to the voters by some other body and does not originate in the body taking the vote. Thus a local dues increase may originate at a local meeting and be voted on by that body by secret ballot pursuant to Section 101 (a)(3)(A)(i), or it may originate at a local meeting and be submitted to the membership at large under Section 101 (a)(3)(A)(ii). To be sure, these are, as the Court below points out, two different procedures, but the difference lies in the origin of

the proposal. There is nothing in the word "referendum" that requires any particular method of voting—such as the "delivery of a ballot to each and every eligible union member"—and excludes the establishment of polling places at meetings of the union or at any other time or place—*e.g.*, in the factory, in the union hall, etc.

Similarly, the referendum method in Section 101 (a)(3)(B) provides for a dues increase by the convention or other governing body of a national or international union or by referendum, *i.e.*, by submission of the proposed dues increase by the convention or other governing body to the membership. Here again, the statute does not attempt to deal with the particular method of voting.

This interpretation has support in the legislative history of Section 101 (a)(3)(B), recently analyzed by this Court in *American Federation of Musicians of the United States and Canada* v. *Wittstein*. This Court pointed out that the House bill which was reported out (H.R. 8342, 86th Congress, 1st Session, vol. I, Legislative History of the LMRDA, U.S. Gov't Printing Office, pp. 687, 697) [5] and contained the identical language of the present Section 101 (a)(3) was an attempt to liberalize the more rigid provisions of S. 1555, passed by the Senate. Significantly, S. 1555 provided for a dues increase by a "referendum by secret ballot through the mails" (I Leg. Hist. p. 519), and it was this mail requirement which was eliminated in the bill which was finally reported and passed, H.R. 8342. The House changes were, as this Court has said, "in the direction of affording unions more latitude for raising dues" (p. 181). The pervading premise of Title I of the Act "is that there should be full and active participation by the rank and file in the affairs of the union" (379 U.S. at p. 182), but with a "minimum of interference by the government in the internal affairs of labor organizations."

[5] This is hereafter referred to as Leg. Hist.

(James P. Mitchell, Secretary of Labor, "Safeguards for Union Democracy," Symposium, p. 137.) See also Senate Report No. 187 on S. 1555, which states as one of three principles: "the desirability of minimum interference by the government in the internal affairs of any private organization." I Leg. Hist. p. 403.

The rigid requirement for "delivery of a ballot to each and every eligible union member" is imported by the Court below into the word "referendum" in order to assure that members receive notice. But no such administrative straitjacket need be imposed by the Court (assuming it has the power) in order to assure a fair vote. Any failure to give notice which results in a referendum by insiders only or is otherwise manipulated can be dealt with under Section 101 (a)(1), which provides equal rights "to vote in elections or referendums" (Section 101 (a)(1), 29 U.S.C. § 411 (a)(1)); *Vestal* v. *International Brotherhood of Teamsters,* 245 F. Supp. 623 (D.C. M.D. Tenn. 1965).

This analysis of Section 101 (a)(3) is buttressed by Senator Goldwater's explanation in "The Legislative History and Purpose of LMRDA," (Symposium, pp. 32, 34). He describes the essentials of that Section as follows:

> "Sec. 101 (a)(3) provides that union dues, initiation fees and assessments shall not be increased except by secret vote of the union members in good standing after reasonable notice of intention to vote on such question or by majority vote of the delegates at a union convention . . ."

Indeed, the use of a mail referendum has not been general union practice. According to a recent survey fifteen of seventeen unions holding election referenda do so through the locals, and only two use mail referenda. (Ev-

erette, "Referendum Elections of National Union Officers," vol. 89, No. 8, Monthly Labor Review, Aug. 1966, p. 856.)

Nor is delivery of a ballot to each and every eligible union member necessarily the best guaranty of a fair vote. Under those circumstances, pressure against the individual who has his ballot and violation of the secrecy requirement can sometimes be more easily accomplished than at a supervised polling place. Also, any such requirement may discourage the use of the referendum altogether, for delivery of a ballot to each and every member of a labor union can be an expensive matter (see comments of Senator Kennedy in connection with elections, II Leg. Hist. p. 1124).

III. The holding of the Court of Appeals below that a union may not bind present members by an assessment equal to the amount of a previous dues increase if the dues increase was illegally made finds no support in the Act.

The Court of Appeals seems to be disturbed that somehow the union action circumvents the Act. It is, of course, true that the assessment would act as a set-off against amounts due to present members who have made payments pursuant to a dues increase found illegal by the Court of Appeals. But the Act nowhere defines the type of assessments a union may levy, how it is to be measured, or how it is to be collected—whether directly or as a set-off. The Act is only concerned that the procedure in levying an assessment be democratic. It is hard to see how the Act is circumvented by an assessment the terms of which the Act does not seek to regulate, effected by a procedure permitted by the Act.

Whether or not persons who made payments pursuant to the original dues increase found illegal but who were no longer members when the assessment was made stand differently from present members is not here material, for there is nothing in the record or the allegations in the com-

plaint to indicate that there are such persons. Nor does the Local attempt to assert the rights of such former members with whom it has no relationship—assuming it has standing to do so.

IV. The assumption of jurisdiction under Section 102 of the Act by the Court of Appeals below is in conflict with the analysis of that Section by the Court of Appeals for the Seventh Circuit in *Air Line Stewards & Stewardesses Association* v. *Transport Workers Union of America,* 334 F. 2d 805.

In that case the Court held that Section 102 did not confer jurisdiction of a suit by an officer of a union brought under Section 101 (a)(5). The Court held that—

> "Section 101 (a) (5) secures and protects members of a labor organization qua members." (P. 809.)

Similarly, in this case, the plaintiff Local is not a "person whose rights secured by the provisions of this title have been infringed." Only rights of members are "secured by the provisions of" Title I. This Title is a "Bill of Rights of *Members* of Labor Organizations." (Emphasis supplied.)

This approach has been summarized as follows by Zwerdling "Title I of LMRDA—One Year's Experience in the Courts," Symposium, pp. 331-332:

> ". . . the court even before asking the question 'is the alleged right "secured by the provisions" of Title I' must determine whether or not the plaintiff is a person who has *any* rights secured to him by the Title. Only a 'yes' answer makes it necessary to consider the further question of whether the particular right is protected." (The italics are in original.)

Significantly, the Local is not here even attempting to assert the rights of members. It alleges injury and expense only to the Local (paragraphs 16 and 17 of the Complaint, R. 9). Moreover, the Local is suing as a "person" in its own behalf; it does not in any event have standing to assert the rights of members. See *Smith* v. *Evening News Association,* 371 U.S. 195, 204 (Black, J., dissenting).

Conclusion.

The decision of the Court of Appeals in this case directly affects every national and international union that has a local affiliate in any of the states in the First Circuit. The decision jeopardizes any changes in inter-union arrangements for the allocation of funds as between the local and other bodies, and imposes rigid limitations on methods of conducting dues referenda which are not necessary for, and indeed may be inconsistent with, the democratic expression of the membership.

It is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSEPH T. DOYLE,
75 Federal Street,
Boston, Massachusetts 02110,

REUBEN GOODMAN,
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Appendix A.

Opinion

January 17, 1966

Caffrey, D.J.

This is a civil action in which a local union affiliated with the International Brotherhood of Telephone Workers seeks an order declaring that an increase in dues put into effect on September 1, 1964 is invalid, and other relief, on the ground that the dues were increased without compliance with Title I, section 101(a)(3) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. 411(a)(3). The action is within the Court's jurisdiction under 29 U.S.C.A. 412.

Plaintiff is Local No. 2, one of twenty-five Locals affiliated with the International Brotherhood of Telephone Workers. It is and at all material times was a voluntary unincorporated labor organization. Local No. 2 has approximately 1075 members and its office is in Boston, Massachusetts. Defendant, International Brotherhood of Telephone Workers, is and at all material times was a voluntary unincorporated international labor organization. It has approximately 10,500 members and its office is in Boston, Massachusetts.

The International meets in convention bienially. In the periods between conventions its affairs are administered by a 15-member group called the International Executive Council (IEC). This Council consists of the President, Secretary-Treasurer and the three Vice-presidents of the International, and ten Executive Board members.

On March 6, 1964, the IEC voted to propose an increase in the minimum dues for all members of the International to 85¢ a week for male members and 50¢ a week for

female members, and to increase the per capita payments from the Locals to the International. Thereafter, William J. Sullivan, the International Secretary-Treasurer, on May 7, 1964, dispatched identical letters to the recording secretaries of all twenty-five Locals. This letter read as follows:

> "The requirements of the Labor Law are that a dues increase must be voted on by a majority of the members in a secret ballot vote taken at a notified membership meeting. In order that we may process the dues increase for both the International and the Local, will you kindly return the enclosed Tally Sheet as soon as possible."

Mr. Sullivan also sent to each Local a four-page mimeographed document setting out proposed changes in the Constitution of the International Brotherhood of Telephone Workers. These amendments, which were introduced in evidence, provided for changes in Article XI, secs. 3, 4 and 6, and Article XXXIII, secs. 3 and 4. The document also set out the present dues structure, the proposed minimum dues, a schedule for the actual dues then being paid by each of the twenty-five Locals, and certain other information relating to the reasons why the IEC recommended the increase in dues. The letter also enclosed a Tally Sheet to be executed by the recording secretary of each Local after the Local voted on the proposed dues increase.

Thereafter, the various Locals voted on the proposed constitutional changes by secret ballots at notified meetings. All Locals were notified by Mr. Sullivan, in a letter dated July 29, 1964, that the dues increases had been favorably voted upon and would go into effect on September 1st. In reporting the results, wherever a majority

of those voting in a Local voted to accept, the International listed the entire membership of that Local as voting "for," and where a majority of those voting in a Local voted to reject, the International listed the entire membership of that Local as voting "against." On this basis the tally showed 6,837 voting "for" and 3,693 voting "against," with 255 votes "not counted because no secret ballot was taken." A majority of those voting in 17 of the Locals voted to accept the proposed changes and a majority of those voting in 7 Locals (including plaintiff, Local No. 2) voted to reject the proposed changes. One Local was listed as "not voting" because of its failure to use the secret ballot. By letter dated July 10, Mr. Sullivan requested each Local to furnish the exact number of votes cast to accept and the number voting to reject at the meeting at which the dues increase was voted on. Out of a total membership of approximately 10,795 members eligible to vote, the number of members whose votes were tallied on defendant's Exhibit C, the actual vote count Local by Local, amounted to 1039, slightly less than ten per cent of the eligible voters. The individual votes were 541 to accept and 498 to reject the constitutional changes and dues increase.

Local No. 2 advised the President of the International by letter dated June 16, 1964 that it was of the opinion that the general dues increase had not been adopted in accordance with the Labor Management Reform Act of 1959 for the reason that "a majority of the membership in good standing of the International Brotherhood of Telephone Workers did not vote to adopt this requested increase in a membership referendum conducted by secret ballot nor any other method provided in this statute." The letter concluded with a request to terminate the processing of the increased dues and to refund any deductions made by reason thereof. This letter apparently was un-

answered. In any event, the requests contained therein were not granted and about three weeks later the instant action was filed by Local No. 2. No other Locals challenged the dues increase.

Despite the fact that all members in good standing of the International were notified by their Locals of the proposed dues increase and were given the opportunity to vote on the proposed dues increase by secret ballot at a specified meeting of the Local, plaintiff contends that in adopting this procedure the International failed to comply with the requirements of 29 U.S.C.A. 411(a)(3)(B)(ii) because a membership referendum must be conducted through the mails.

By enacting the "Bill of Rights of Members of Labor Organizations," Congress intended to protect the right of the rank and file to participate in the affairs of the Union.

> "... 101(a)(3)(B) was intended to guarantee a member's 'right to participate in deciding upon the rate of dues, initiation fees, and assessments,' H.R. Rep. No. 741 on H.R. 8342, 86th Cong., 1st Sess., at 7, I Leg. Hist. 759, 765, but not to bar a well-known system of voting embodied in many union constitutions which well serves that end." *Musicians Federation* v. *Wittstein,* 379 U.S. 171, at 181 (1964).

The method of conducting the vote on the proposed dues increase here adopted by the International fully protected the rights of its members. Each member in good standing was notified of the proposed dues increase; each had an opportunity to vote on it by secret ballot. It may be regrettable that so few members chose to avail themselves of their right, but there is no evidence in the record tending to show that any fault or wrongdoing by the International was responsible for such a light vote.

The vote in favor of the dues increase was 541 to 498. I rule that the dues increase was authorized by majority vote of the members in good standing of the International voting in a membership referendum conducted by secret ballot and, accordingly, that the dues increase put into effect on September 1, 1964 was valid. The finding that the voting on the proposed amendments to the Constitution complied with the requirements of 29 U.S.C.A. 411(a)(3) makes it unnecessary to consider defendant's argument that the increase in the "per capita tax" was not an increase in the dues of the members of the International.

Judgment for the defendant. Complaint dismissed.

(s) ANDREW A. CAFFREY
U. S. District Judge

Appendix B.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6696.

LOCAL NO. 2, INTERNATIONAL BROTHERHOOD OF TELEPHONE WORKERS,
PLAINTIFF, APPELLANT,
v.
INTERNATIONAL BROTHERHOOD OF TELEPHONE WORKERS,
DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Before ALDRICH, *Chief Judge*,
McENTEE and COFFIN, *Circuit Judges*.

James T. Grady, with whom *Robert D. Manning* and *Angoff, Goldman, Manning & Pyle* were on brief, for appellant.

Joseph T. Doyle for appellee.

OPINION OF THE COURT.

July 13, 1966.

McENTEE, *Circuit Judge*. Plaintiff-appellant, Local No. 2, is a labor union composed of some 1,075 male employees of the New England Telephone and Telegraph Company. It is a chartered affiliate of the respondent-appellee, International Brotherhood of Telephone Workers. International

has twenty-four other local affiliates located in various sections of New England and a total enrollment of about 10,700 employees of the New England Telephone and Telegraph Company.

International meets in convention every two years. In the interim between conventions its affairs are administered by a fifteen man group known as the International Executive Council (I.E.C.). In March 1964 I.E.C. recommended a general dues increase to the membership of International. This involved raising the minimum local dues paid by its members and also raising the per capita taxes paid by each local to the International.[1] These recommendations required changes in International's constitution. Accordingly, the International secretary-treasurer sent the proposed constitutional changes to each local union with an explanation of the need for the increased funds. On May 7 he sent a letter stating: "The requirements of the Labor Law are that a dues increase must be voted on by a majority of the members in a secret ballot vote taken at a notified membership meeting." Also enclosed was a tally sheet to be executed and returned by the recording secretary. Thereafter, the various locals voted on the proposed increase by secret ballot[2] at notified membership meetings as directed by the secretary-treasurer. Local No. 2 rejected the increase. Shortly after learning that

[1] It recommended that the minimum local dues paid by each male member be raised from 60¢ a week to 85¢ a week and that the per capita tax for each male member of International be increased from $1.50 per month to $2.25 per month. As related to Local No. 2, this meant an increase of one cent per week in local dues, since its members were already paying eighty-four cents a week, and an increase of seventy-five cents a month in the per capita tax for each member. I.E.C. made other recommendations that are not pertinent to this case.

[2] One local did not vote by secret ballot and its votes were not counted in the general tally.

the proposed increase had apparently been accepted by the membership,[3] Local No. 2 notified the International that this increase had not been adopted "in accordance with the Labor Management Reform Act of 1959."[4] Also, it requested that processing of the new payroll deduction cards (based on the increase) be terminated and reimbursement be made for any increase collected. Having received no reply, Local No. 2 thereupon brought this suit[5] to invalidate the increase and for injunctive and other relief.

By letter dated July 29, 1964, International notified the locals[6] that the general dues increase had been approved by the membership by a vote of 6,837 to 3,693[7] and would go into effect on September 1, 1964. Almost ten months after the general dues increase went into effect, the next regular International Convention[8] voted to increase the local dues and the per capita tax in the amounts as originally proposed, retroactive to September 1, 1964, by en-

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[3] Local No. 2 claims that it first learned of this in the May 1964 issue of the IBTW News.

[4] The Labor-Management Reporting and Disclosure Act, (LMRDA), 29 U.S.C. § 401 et seq.

[5] The complaint was filed on July 9, 1964.

[6] Local No. 2 claimed it never received any such notice.

[7] The day after this suit was brought, International requested from each local the exact number of votes cast for and against the general dues increase. In reporting the results, wherever a majority of those voting in a local voted to accept the increase, the *entire* membership of that local was recorded as voting for it, and wherever a majority of those voting in a local rejected it, the *entire* membership of that local was recorded as voting against it. Two hundred fifty-five votes were not counted because no secret ballot was taken. Actually only 1,039 out of 10,785 eligible members voted. Of those voting 541 voted to accept and 498 voted to reject the proposed increase. A majority of those voting in seventeen of the locals voted to accept the increase.

[8] Held on June 28, 1965.

acting identical constitutional amendments as previously voted by the locals. After trial without a jury, the district court dismissed the complaint.[9]

Basically, Local No. 2's contentions on appeal are (1) that the general dues increase is invalid because the procedure followed by the various locals in voting on it does not constitute a *membership referendum* conducted by secret ballot as required by § 411(a)(3)(B)(ii) of the statute,[10] and (2) that the action taken by the convention

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[9] It ruled "that the dues increase was authorized by majority vote of the members in good standing of the International voting in a membership referendum conducted by secret ballot and, accordingly, that the dues increase put into effect on September 1, 1964 was valid."

[10] 29 U.S.C. § 411(a)(3) provides as follows:

"*Dues, initiation fees, and assessments.*—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitu-

in June 1965 to increase the dues retroactively from September 1, 1964 did not cure the original invalidity.

International claims that the action taken on the general dues increase by the various locals does constitute "a membership referendum conducted by secret ballot" within the meaning of the statute;[11] that the increase in the "per capita tax" is not an increase in "rates of dues" nor is it a "general or special assessment upon members" as these terms are used in this statute,[12] and finally that this controversy is now moot and the case should be dismissed because of the action of the International Convention adopting this general dues increase retroactive to September 1, 1964.[13]

We shall deal first with the International's contention that the increase in the per capita tax is not an increase in dues. International argues that the statute applies only to ". . . rates of dues . . . payable *by members* of any labor organization . . . ."[14] (Emphasis supplied.) and that the per capita tax is paid by the various *locals*—not the members. In support of this proposition it cites *Ranes* v. *Office Employees International Union, Local 28*, 317

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tion and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization."

[11] 29 U.S.C. § 411(a)(3)(B)(ii). See fn. 10.

[12] Hence, it argues that the procedure followed to increase the per capita tax need not conform to the statute (see fn. 11), thus leaving this court without jurisdiction since no substantive right is presented to us for enforcement as required for jurisdiction under 29 U.S.C. § 412.

[13] This question and the previous question of whether the increase in the per capita tax was an increase in *dues* were not reached by the district court.

[14] 29 U.S.C. § 411(a)(3), first paragraph. See fn. 10.

F.2d 915 (7th Cir. 1963), and *King* v. *Randazzo*, 234 F. Supp. 388 (D.C.E.D.N.Y. 1964).

We do not agree that *Ranes* stands for the proposition that a per capita tax does not come within the meaning of "rates of dues".[15] *King* v. *Randazzo* merely repeats the dicta in *Ranes* and does not otherwise support International's contention. Apparently this is the first time this question has been squarely presented for judicial determination. From our study of the provisions of the statute itself and its legislative history it is our opinion that so-called per capita taxes come within the meaning of "rates of dues . . . payable by members of any labor organization. . . ." and that any increase thereof by an International union must conform to the procedure set out in 29 U.S.C. § 411(a)(3)(B).

In *King* v. *Randazzo, supra,* the court laid down a very practical test as to what constitutes an increase in dues. It stated at page 394: "Whether there has been an increase in dues must be determined not by who imposed the exaction but by the nature of the imposition and its direct effect upon the financial burden of the individual members." We think this statement goes to the very heart of the immediate question before us. To contend that per capita taxes are paid by the locals and not by the union members only begs the question. While technically they may be collected from the local unions by the Inter-

[15] Per capita taxes were only incidentally involved in that case. There the only issue was whether the action of an international union pursuant to § 411(a)(3)(B) of the statute increasing the constitutional minimum for dues payable by its members to their respective local unions can be enforced by an affiliate local union without submitting the question of the dues increase to a vote of its members under § 411(a)(3)(A) of the statute. The local contended that § 411(a)(3)(B) was intended by Congress to apply only to a per capita tax and not to local membership dues. As we read the case, the court merely stated (p. 918) that the Congressional intent was not that restrictive.

national,[16] it would be unrealistic for us to assume that these assessments are not borne by the members and that they do not have a direct effect upon the financial burden of the individual members.[17]

In the instant case the International is raising the per capita tax and the local membership dues at the same time,[18] which emphasizes International's awareness of the true source of the increased revenue. After the general dues increase was approved, Local No. 2 found it necessary to vote another increase in its local membership dues.[19] Clearly then, the so-called per capita tax is an exaction which is actually paid by the members, however indirectly, and to hold otherwise, it seems to us, would tend to defeat the policy and purpose and undermine some of the safeguards which Congress in its wisdom wrote into this act.

We now turn to the issue upon which this case was decided below, namely, whether the general dues increase complied with the requirements of 29 U.S.C. § 411(a)(3)(B)(ii). This presents the narrower question of whether voting by secret ballot at a notified membership meeting is tantamount to voting in a membership referendum conducted by secret ballot. In resolving this issue it is helpful to consider first, Section 411(a)(3)(A) relating to the procedure which local unions must follow in increasing

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[16] The record shows that the International collected all the dues. The local membership dues were collected weekly. From these, International took the per capita monthly and remitted the balance to the locals.

[17] As stated in the brief of Local No. 2, "Whatever it is called or described as, it [the per capita tax] is an increase in the money paid by the members to the International of 75¢ each month. There is 75¢ less each month in each member's pay envelope. . . ."

[18] This appears to be the general policy of Internationals that levy so-called per capita taxes. See *Ranes* v. *Office Employees International Union, Local 28, supra,* at 917, fn. 3.

[19] This increase took place in August 1964.

dues. A comparison of the methods set out in this subsection clearly indicates that Congress intended to provide two entirely different procedures—one by notified membership meeting; the other by membership referendum—each to be conducted by secret ballot. In the former procedure there is a notice requirement, while in the latter there is no such requirement. In the referendum method there is no necessity for notice. We believe Congress intended that in this method the ballot be delivered to each and every eligible union member. He is not required to attend a notified meeting to obtain it. This is the principal distinction between these two statutory procedures.

The membership referendum provision in the subsection directly involved in this case relating to dues increases by Internationals is practically identical with the membership referendum provision in the preceding subsection relating to dues increases by locals.[20] Obviously the Congressional intent is the same in both subsections. From this we conclude that the series of notified local membership meetings employed in this case were not the same as and did not constitute a membership referendum within the meaning of the statute. Where a specific procedure is set forth in the statute that procedure must be followed. The procedure mandated by the statute in question not having been adhered to, the general dues increase as voted was initially void.

Local No. 2 urges that the constitutional amendments providing for this general dues increase retroactive to September 1, 1964, adopted by the International Convention in June 1965 were also invalid. As reasons therefor it states (1) that the thirty day notice requirement of the statute has not been complied with, and (2) that this action could not validate a procedure that was originally void.

[20] Compare § 411(a)(3)(B)(ii) with § 411(a)(3)(A)(ii). See fn. 10.

There is no merit in its first contention. This notice provision applies only in the case of special conventions.[21] The convention in question was the *regular* International convention held every two years.

Its second contention is somewhat more substantial. There is no doubt that under the statute [22] this convention could validly vote a general dues increase effective prospectively and to this extent we uphold its action. Here, however, the convention is also seeking to give this dues increase retroactive effect. This we do not countenance. We may assume, as International suggests, that a convention may properly impose a flat assessment as well as a prospective increase in dues. What the convention did here, however, was something different. A flat assessment would have fallen upon the current membership. The past increases sought to be ratified presumably fell upon some individuals no longer in the union at the time of the convention, and thus entirely unrepresented in the only valid vote. Furthermore, the convention must have been influenced, at least to some extent, by the fact that the "assessment" for which it voted consisted of monies already collected. Where the collection had been improperly achieved we think the membership must be given the benefit of the doubt. We think it more consonant with the intent of Congress to hold that dues' increases illegally collected cannot be ratified, and that they should be refunded. However, as indicated above, the general dues increase adopted by the convention is valid prospectively from the date of its adoption.

The judgment of the District Court is vacated and this cause is remanded to that court for further proceedings not inconsistent with this opinion.

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[21] 29 U.S.C. § 411(a)(3)(B)(i). See fn. 10.

[22] See fn. 21.

Appendix C.

Labor-Management Reporting and Disclosure Act of 1959.

73 Stat. 519 et seq., 29 U.S.C. § 401 et seq.

Title I—Bill of Rights of Members of Labor Organizations

BILL OF RIGHTS

SEC. 101. (a)(1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) FREEDOM OF SPEECH AND ASSEMBLY.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) DUES, INITIATION FEES, AND ASSESSMENTS.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees

payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not

the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

CIVIL ENFORCEMENT

SEC. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

RETENTION OF EXISTING RIGHTS

SEC. 103. Nothing contained in this title shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.

RIGHT TO COPIES OF COLLECTIVE BARGAINING AGREEMENTS

SEC. 104. It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. The provisions of section 210 shall be applicable in the enforcement of this section.

INFORMATION AS TO ACT

SEC. 105. Every labor organization shall inform its members concerning the provisions of this Act.

TITLE II—REPORTING BY LABOR ORGANIZATIONS, OFFICERS AND EMPLOYEES OF LABOR ORGANIZATIONS, AND EMPLOYERS

REPORT OF LABOR ORGANIZATIONS

SEC. 201. (a) Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with

the Secretary, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information—

(1) the name of the labor organization, its mailing address, and any other address at which it maintains its principal office or at which it keeps the records referred to in this title;

(2) the name and title of each of its officers;

(3) the initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;

(4) the regular dues or fees or other periodic payments required to remain a member of the reporting labor organization; and

(5) detailed statements, or references to specific provisions of documents filed under this subsection which contain such statements, showing the provision made and procedures followed with respect to each of the following: (A) qualifications for or restrictions on membership, (B) levying of assessments, (C) participation in insurance or other benefit plans, (D) authorization for disbursement of funds of the labor organization, (E) audit of financial transactions of the labor organization, (F) the calling of regular and special meetings, (G) the selection of officers and stewards and of any representatives to other bodies composed of labor organizations' representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected, (H) discipline or removal of officers or agents for breaches of their trust, (I) imposition of fines, suspensions, and expulsions of members, including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures, (J)

authorization for bargaining demands, (K) ratification of contract terms, (L) authorization for strikes, and (M) issuance of work permits. Any change in the information required by this subsection shall be reported to the Secretary at the time the reporting labor organization files with the Secretary the annual financial report required by subsection (b).

(b) Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year—

(1) assets and liabilities at the beginning and end of the fiscal year;

(2) receipts of any kind and the sources thereof;

(3) salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(6) other disbursements made by it including the purposes thereof;

all in such categories as the Secretary may prescribe.

(c) Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(d) Subsections (f), (g), and (h) of section 9 of the National Labor Relations Act, as amended, are hereby repealed.

(e) Clause (i) of section 8(a)(3) of the National Labor Relations Act, as amended, is amended by striking out the following: "and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h)".

Title III—Trusteeships

Reports

Sec. 301. (a) Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after the date of the enactment of this Act or the imposition of

any such trusteeship, and semiannually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization in regular or special conventions or other policy-determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 201(b) signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.

(b) The provisions of section 201(c), 205, 206, 208, and 210 shall be applicable to reports filed under this title.

(c) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any report required under the provisions of this section or willfully makes any false entry in or willfully withholds, conceals,

or destroys any documents, books, records, reports, or statements upon which such report is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(e) Each individual required to sign a report under this section shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

PURPOSES FOR WHICH A TRUSTEESHIP MAY BE ESTABLISHED

SEC. 302. Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

UNLAWFUL ACTS RELATING TO LABOR ORGANIZATION UNDER TRUSTEESHIP

SEC. 303. (a) During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate, or (2) to transfer to such organization any current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: *Provided,* That nothing herein contained shall prevent the distribution of the assets of

a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

ENFORCEMENT

SEC. 304. (a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may

be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

REPORT TO CONGRESS

SEC. 305. The Secretary shall submit to the Congress at the expiration of three years from the date of enactment of this Act a report upon the operation of this title.

COMPLAINT BY SECRETARY

SEC. 306. The rights and remedies provided by this title shall be in addition to any and all other rights and remedies at law or in equity: *Provided,* That upon the filing of a complaint by the Secretary the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment shall be res judicata.

TITLE IV—ELECTIONS

TERMS OF OFFICE; ELECTION PROCEDURES

SEC. 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often

than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a

fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted

in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

ENFORCEMENT

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401; or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

APPLICATION OF OTHER LAWS

SEC. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy pro-

vided by this title for challenging an election already conducted shall be exclusive.

EFFECTIVE DATE

SEC. 404. The provisions of this title shall become applicable—

(1) ninety days after the date of enactment of this Act in the case of a labor organization whose constitution and bylaws can lawfully be modified or amended by action of its constitutional officers or governing body, or

(2) where such modification can only be made by a constitutional convention of the labor organization, not later than the next constitutional convention of such labor organization after the date of enactment of this Act, or one year after such date, whichever is sooner. If no such convention is held within such one-year period, the executive board or similar governing body empowered to act for such labor organization between conventions is empowered to make such interim constitutional changes as are necessary to carry out the provisions of this title.